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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/671,415	09/25/2003	David Andrew D'Zmura		9394

7590 10/19/2004  
David Andrew D'Zmura  
P.O. Box 621  
Indio, CA 92201-0621

EXAMINER

FERNSTROM, KURT

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/671,415

Applicant(s)

D'ZMURA, DAVID ANDREW

Examiner

Kurt Fernstrom

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There are numerous instances of indefinite language.

Several terms throughout the claims lack antecedent basis. That is, the language is presented as though the subject matter were previously recited in the claims, when in fact it was not. For example, claim 4, line 4 recites "the zodiac constellations". It is not clear which zodiac constellations are being referred to here, since zodiac constellations were not previously recited as part of the claimed invention. Other examples of claim language which lacks antecedent basis includes "said ecliptic belt", "the earth", "said stars and objects" in claim 4; and "said arc sections" and "the second subject zodiac components" in claims 12 and 15.

Also, the term "wherein" is used incorrectly throughout the claims. A "wherein" clause generally involves language which would be a grammatically correct statement standing alone. For example, in claim 4, line 10, "wherein locating subject at center" should be "wherein said subject is located at the center". Similar changes are required throughout the claims.

Additionally, the phrase “the group of ten planets comprising the sun, the moon and eight non-earth planets” in claims 4, 9 and 13 is indefinite, as the sun and the moon are not planets. It is also not clear in this context which moon is being referenced. Also, the term “abot”, which appears repeatedly in claim 6, renders the claim indefinite. In each instance it appears that applicant is attempting to claim a range without clearly specifying the boundaries of the range.

Finally, the phrases “means for a circular chart” in claims 6 and 7, “means physically rendering said interior circle optional” in claim 7 and “means for an additional band” in claim 15 render the claims indefinite. Under 35 USC 112, para. 6, “means-plus-function” claim language is to be interpreted in light of the disclosure. Such language must be presented in a “means for [performing some function]” format. The phrases “means for a circular chart” and “means for an additional band” lack a function. Also, it is not clear what structure is encompassed by a “means physically rendering said interior circle optional”. Generally, “optional” features are indefinite under 35 USC 112.


Because the scope of the claimed invention cannot be determined for the reasons discussed above, an appropriate examination in light of the prior art cannot be performed at this time. Applicant is requested to more clearly define the invention.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (703) 305-0303. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (703) 308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**KURT FERNSTROM**  
**PRIMARY EXAMINER**

KF  
October 15, 2004